

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re) Case No. _____
)
) NOTICE OF **PRELIMINARY**
) HEARING ON MOTION
) FOR USE OF CASH COLLATERAL
) TO OBTAIN CREDIT
Debtor(s)) (Check One)

YOU ARE NOTIFIED THAT:

1. The undersigned moving party, _____, filed a Motion For Use of Cash Collateral To Obtain Credit (*check one*). A copy of the motion is attached; and it includes BOTH (i) the statement required by [Local Form #541.7](#), and (ii) the following allegations:

a. The immediate and irreparable harm that will come to the estate pending a final hearing is _____.

b. The amount of cash collateral credit (*check one*) necessary to avoid the harm detailed above prior to the final hearing is _____.

2. The name and service address of the moving party's attorney (or moving party, if no attorney) are: _____.

3. A **PRELIMINARY** HEARING on the motion WILL BE HELD ON _____ AT _____
IN _____.

Testimony will be received if offered and admissible.

4. If you WISH TO OBJECT to the motion, YOU MUST DO ONE OR BOTH OF THE FOLLOWING: (1) ATTEND the preliminary hearing; AND/OR (2) FILE with the Clerk of Court (i.e., if the 5-digit portion of the Case No. begins with "3" or "4", mail to 1001 SW 5th Ave. #700, Portland OR 97204; OR if it begins with "6" or "7", mail to 405 E 8th Ave #2600, Eugene OR 97401), BOTH: (a) a written response, which states the facts upon which you will rely, AND (b) a certificate showing a COPY of the response was given DIRECTLY TO the Judge, and served on the U.S. Trustee and the party named in pt. 2 above. See [Local Form #541.51](#) for details.

5. On _____ copies of BOTH this notice AND the motion were served pursuant to FRBP 7004 on the debtor(s); any debtor's attorney; any trustee; any trustee's attorney; members of any committee elected pursuant to 11 U.S.C. §705; any Creditors' Committee Chairperson [or, if none serving, on all creditors listed on the list filed pursuant to FRBP 1007(d)]; any Creditors' Committee attorney; the U.S. Trustee; and all affected lien holders whose names and addresses used for service are as follows:

Signature

(If debtor is movant) Debtor's Address & Taxpayer ID#(s) (last 4 digits)

1 **Albert N. Kennedy**, OSB No. 821429 (Lead Attorney)

Direct Dial: (503) 802-2013

2 Facsimile: (503) 972-3713

E-Mail: al.kennedy@tonkon.com

3 **Michael W. Fletcher**, OSB No. 010448

Direct Dial: (503) 802-2169

4 Facsimile: (503) 972-3869

E-Mail: michael.fletcher@tonkon.com

5 **TONKON TORP LLP**

1600 Pioneer Tower

6 888 S.W. Fifth Avenue

Portland, OR 97204

7 Attorneys for Debtor

10 UNITED STATES BANKRUPTCY COURT

11 DISTRICT OF OREGON

12 In re

13 Western Communications, Inc.,

14 Debtor.

Case No. 11-37319-elp11

**DEBTOR'S MOTION FOR
AUTHORITY TO USE CASH
COLLATERAL**

EXPEDITED HEARING REQUESTED

16 Pursuant to 11 U.S.C. § 363(c) and Bankruptcy Rule 4001(b), Western
17 Communications, Inc., an Oregon professional corporation ("Debtor" or "Debtor-In-
18 Possession") moves this Court for an order (1) authorizing Debtor to use cash collateral on a
19 temporary basis until a final hearing can be held on this motion; and (2) after a final hearing
20 held pursuant to Bankruptcy Rule 4001(c)(2), a final order authorizing Debtor to use cash
21 collateral during the pendency of this case. In support of this motion, Debtor states as
22 follows:

23 1. On August 23, 2011 (the "Petition Date"), Debtor filed its voluntary
24 petition for relief under Chapter 11 of the United States Bankruptcy Code.

25 * * *

26 * * *

2. Debtor has continued in possession of its property and is continuing to operate and manage its business as Debtor-In-Possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

3. This court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2).

4. No request has been made for the appointment of a trustee or an examiner, and no official creditors' committee has yet been established in this case.

5. Debtor is an Oregon corporation headquartered in Bend, Oregon. Debtor currently employs approximately 100 full time salaried employees and 280 hourly employees. Debtor also utilizes more than 150 independent contractors for the distribution and delivery of its newspapers.

6. Debtor is a small market newspaper, niche publishing, printing and digital media company with publications spread throughout Oregon (six publications) and California (two publications). Debtor produces and publishes the Bend Bulletin, the Baker City Herald, the La Grande Observer, the Redmond Spokesman, the Brookings Curry Coastal Pilot, the Crescent City Daily Triplicate, and the Sonora Union Democrat. Debtor also publishes the Central Oregon Nickel Ads in Bend, Oregon. Debtor is committed to community journalism and believes in the invaluable role and responsibility of community newspapers.

7. Debtor's newspapers are the dominant media in their markets. The largest market served by Debtor is Bend, Oregon, which had seen excellent growth until the recent recession. The other markets served by Debtor are much smaller low to no growth areas. The recession hit Bend much harder than the other markets, primarily because of the significant decline in Bend real estate values. The Bend Bulletin and related publications had

* * *

1 done an excellent job in capitalizing on the advertising base for local real estate, which meant
2 they had farther to fall when the real estate market declined.

3 8. Debtor produces high quality newspapers that regularly receive
4 industry awards for journalistic excellence. For example, in 2000 The Union Democrat won
5 the nationally prestigious Payne Award for ethics in journalism from the University of
6 Oregon. The Bend Bulletin received the General Excellence Award from the Oregon
7 Newspaper Publishers Association, where it competes in the same category with newspapers
8 many times its size—including the Oregonian, and the reproduction quality of The Bulletin
9 has won the Northwest Print Quality contest seven times in the last nine years (finishing
10 second the other two years). The LeGrande Observer won the General Excellence Award in
11 its category seven of the last 10 years.

12 9. Due primarily to the poor real estate market in Bend and the recession
13 in general, Debtor's revenues (primarily from advertising) dropped significantly from 2006 to
14 2010. Debtor has reacted to the declining revenues by implementing numerous and
15 significant cost controls, while at the same time maintaining the high quality and integrity of
16 its publications.

17 10. Although the recession has taken a significant toll on Debtor, Debtor
18 believes Debtor and Debtor's markets, particularly Bend, will rebound and have excellent
19 long-term growth prospects. Of particular note is the Bend Bulletin circulation growth,
20 which is directly countering national newspaper circulation trends. The Bulletin total paid
21 circulation (including newsstand sales) increased nearly 22% from 2003 through 2010,
22 compared to a decline of 17% nationwide.

23 11. In late 2008/early 2009, Debtor's lender, Bank of America, N.A.
24 ("B of A") declared Debtor in default of certain financial covenants set forth in its loan
25 documents. In June 2009, Debtor entered into a forbearance agreement with B of A, and
26 continued to operate under the forbearance agreement (as extended from time to time) until

1 June 23, 2011, at which time the forbearance agreement expired. Debtor made all scheduled
2 payments to B of A through June 30, 2011.

3 12. B of A claims a security interest in substantially all of Debtor's
4 personal property and in certain real property of Debtor.

5 13. To preserve and maintain the assets of this bankruptcy estate and to
6 preserve the value of Debtor as a going concern, Debtor requires the use of B of A's cash
7 collateral.

8 14. Debtor has prepared a 13-week cash collateral budget (attached hereto
9 as Exhibit 1) setting forth the amount necessary for Debtor's continued operations prior to the
10 final hearing and during such 13-week period.

11 15. Without the use of cash collateral, Debtor has insufficient funds to
12 meet its expenses and other payments set forth in the budget. Debtor has an immediate need
13 to use B of A's cash collateral to pay its vendors, employees, benefit plans, and ongoing
14 operating expenses.

15 16. It is in the best interest of Debtor, its creditors, and its estate for Debtor
16 to use B of A's cash collateral because the use of cash collateral will allow the continued
17 operation of Debtor as a going concern, will maximize the likelihood of reorganization, and
18 will maximize the recovery to all creditors.

19 17. To provide adequate protection for the use by Debtor of B of A's cash
20 collateral, Debtor proposes that B of A be granted a replacement security interest in and lien
21 upon Debtor's assets generated or acquired from and after the Petition Date of the same
22 category, kind, character, and description as were subject to B of A's lien on the Petition
23 Date. The adequate protection lien granted to B of A shall not enhance or improve the
24 position of B of A. Debtor believes the going concern value of the assets securing the
25 indebtedness owing to B of A exceeds the amount of the indebtedness owing to B of A.

26 * * *

1 18. Debtor will suffer immediate and irreparable harm if it is not permitted
2 to use B of A's cash collateral. Without use of B of A's cash collateral, Debtor will not be
3 able to pay its expenses and other payments set forth in the budget, Debtor's operations will
4 need to cease, and the value of Debtor's assets will be materially diminished.

5 19. None of the provisions listed in LBF 541.7 are included in this motion
6 or the proposed order.

7 20. A copy of the proposed interim order authorizing use of cash collateral
8 and granting adequate protection is attached hereto as Exhibit 2.

9 WHEREFORE, Debtor prays that this court enter an interim order
10 (1) authorizing Debtor to use cash collateral, pending a final hearing on this motion;
11 (2) granting to B of A adequate protection as herein proposed or is otherwise approved by the
12 court; and (c) setting a final hearing on this motion.

13 DATED this 24th day of August, 2011.

14 TONKON TORP LLP

15
16 By /s/ Albert N. Kennedy
17 Albert N. Kennedy, OSB No. 821429
18 Michael W. Fletcher, OSB No. 010448
19 Attorneys for Debtor
20
21
22
23
24
25
26

EXHIBIT 1

Western Communications
Cash Collateral Budget
(Includes activity of wholly owned subsidiary, The Union Democrat)

Receipts:

AR/Subscriptions Cash Collections Bulletin	290,000	350,000	210,000	250,000	280,000	350,000	210,000	250,000	280,000	340,000	290,000	250,000	250,000	280,000
AR/Subscriptions Cash Collections other papers	180,000	160,000	150,000	170,000	180,000	180,000	150,000	170,000	180,000	150,000	190,000	170,000	180,000	150,000
Circ auto renew CC	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000
Circ auto renew ACH	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500
Total	502,500	542,500	392,500	452,500	492,500	562,500	392,500	452,500	512,500	522,500	442,500	452,500	462,500	462,500

Disbursements:

Gross payroll														
Employer taxes/workers comp		530,000		280,000	222,000	280,000	222,000	280,000	222,000	280,000	500,000		500,000	
Health Insurance - Premium and fees		60,000		35,000	28,000	35,000	28,000	35,000	28,000	35,000	60,000		60,000	
Health Ins - Claims/Flex		75,000	25,000				25,000				25,000			
Prop/Casualty/Liab Ins				100,000		100,000			100,000			100,000		
Carriers/haulers				50,000		50,000								
Correspondents/other contract labor														
News bureaus AP	85,000		165,000		85,000			165,000		85,000				85,000
News bureaus other	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000
Page Co-op payments covering weekly production	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500
Page Co-op payments covering other (such as ink delivery)	70,000	70,000	70,000	70,000	70,000	70,000	70,000	70,000	70,000	70,000	70,000	70,000	70,000	70,000
Postage		22,000	15,000			15,000			15,000					
Annual software license fees					60,000						22,000			
Other oper expenses	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500
Utilities/phone/internet				60,000	7,500	60,000							60,000	
Deposits - Utilities		75,000												
Capital (Primarily computer upgrades)			30,000	30,000		30,000		30,000		30,000				

Total Disbursements

180,000	862,000	300,000	605,000	490,000	602,000	370,000	670,000	460,000	185,000	702,000	365,000	715,000	185,000	
Increase (Decrease) in Cash														
Cash Beginning Balance	322,500	(319,500)	92,500	(152,500)	2,500	(39,500)	22,500	(217,500)	52,500	(259,500)	87,500	(252,500)	277,500	
Cash Ending Balance	295,000	617,500	298,000	390,500	238,000	240,500	201,000	223,500	6,000	396,000	136,500	224,000	(28,500)	
Cash Ending Balance	617,500	298,000	390,500	238,000	240,500	201,000	223,500	6,000	58,500	136,500	224,000	(28,500)	249,000	

(Cash balance does not include approximately \$240,000 held in the Fidelity Investments account)

EXHIBIT 2

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re

Western Communications, Inc.,
Debtor.

Case No. 11-37319-elp11

**INTERIM ORDER AUTHORIZING USE
OF CASH COLLATERAL AND
GRANTING ADEQUATE PROTECTION**

THIS MATTER having come before the Court upon Debtor's Motion for Authority to Use Cash Collateral ("Motion") and the Court being duly advised in the premises and finding good cause; now, therefore,

IT IS HEREBY ORDERED as follows:

1. On an interim basis pending a final hearing on the Motion, Debtor is authorized to use cash collateral in which B of A, N.A. ("B of A") claims a security interest (the "Cash Collateral") in accordance with the terms of this Order to pay costs and expenses incurred by Debtor in the ordinary course of its business, consistent with the budget attached to this Order as Exhibit 1 (the "Budget").

2. Debtor's authority to use Cash Collateral is limited to the amounts set forth in the Budget; provided, however, that Debtor may make expenditures in excess of said

sums in the Budget so long as any variance shall not exceed 10% of the cumulative expenses as set forth in the Budget, tested on a monthly basis. Debtor may exceed such variances only with the prior written consent of B of A or by subsequently entered order of this Court. On or before 10 days after the end of each month, Debtor shall deliver to B of A a report comparing, on a line item and aggregate basis, Debtors' actual performance to the Budget.

3. Debtor's authority to use Cash Collateral, without further order of the Court issued after notice and hearing or the written consent of B of A, shall automatically expire upon the earlier of (a) _____, 2011, or (b) regardless of whether Debtor has expended the entire amount set forth in the Budget, the failure by Debtor to comply with any provision of this Order (such failure being an "Event of Default"), which failure is not remedied within five business days after delivery of notice of such failure by B of A to Debtor (the earlier of such date, the "Termination Date"). Upon the Termination Date, Debtor's authority to use or spend any further Cash Collateral shall automatically terminate unless and until Debtor obtains the written consent of B of A or a further order of this Court, issued after notice and an opportunity for a hearing, provided, however, that notwithstanding the occurrence of the Termination Date, Debtor shall be authorized to use Cash Collateral to pay those budgeted amounts that have been incurred prior to the Termination Date.

4. As adequate protection for any Cash Collateral used by Debtor, B of A is hereby granted, pursuant to Sections 361(1) and 363(e) of the Bankruptcy Code, a perfected lien (the "Replacement Lien") to secure an amount of B of A's prepetition claims equal to the extent of any diminution in value of the Prepetition Collateral (the "Diminution") by reason of the use of Cash Collateral authorized herein, whether as a result of physical deterioration, consumption, shrinkage or otherwise. The Replacement Lien shall attach to all property and assets of Debtor and its estate, of any kind or nature whatsoever, whether now owned or hereinafter acquired by Debtor, and all products, proceeds, rents, issues or profits thereof that were either subject to the Prepetition Liens or acquired as a result of Debtor's use and/or expenditure of Cash Collateral;

provided, however, that the Replacement Lien shall not attach to property recovered through the exercise of the powers granted under Sections 506(c), 544, 545, 547, 548 and 549 of the Bankruptcy Code. Granting this security interest to B of A is for the purpose of providing adequate protection to B of A to protect its allowed secured claim on the Petition Date and is not intended, nor shall it be deemed, to improve the collateral position of B of A as of the Petition Date.

5. The Replacement Lien shall be in addition to all other security interests and liens securing B of A's allowed secured claim in existence on the Petition Date. Additionally, nothing in this Order shall abridge or limit B of A's security interest in proceeds, products, or profits to the extent provided under Section 552 of the Bankruptcy Code

6. The Replacement Lien hereunder shall at all times be senior to the rights of Debtor and any successor trustee or estate representative in this case or any subsequent cases or proceedings under the Bankruptcy Code.

7. The Replacement Lien granted to B of A by this Order shall be perfected and enforceable by operation of law upon execution and entry of this Order by the Court without regard to whether such Replacement Lien is perfected under applicable non-bankruptcy law.

8. To the extent the Replacement Lien proves to be inadequate as adequate protection for the Diminution, as further partial adequate protection B of A shall and hereby does hold allowed administrative claims under Section 503(b) of the Bankruptcy Code, which claims shall have priority over, and be senior to, all other administrative claims against Debtor pursuant to Section 507(b) of the Bankruptcy Code.

9. Debtor shall at all times keep the Prepetition Collateral and the properties to which the Replacement Lien attaches free and clear of all other liens, encumbrances and security interests, other than those in existence on the Petition Date, and shall pay and discharge when due all taxes, levies and other charges arising or accruing from and after the Petition Date.

10. In the event of the occurrence of an Event of Default, and at all times thereafter, B of A may seek relief from the Court on five business days' written notice to Debtor to, among other things, terminate Debtor's authority to use all or any portion of the Cash Collateral.

14. The provisions of this Order and the effect of any actions taken hereunder shall survive issuance and entry of any order converting this case to one under Chapter 7 of the Bankruptcy Code or dismissing this Chapter 11 case. The priorities, liens and security interests granted herein shall continue in this or any superseding case under the Bankruptcy Code, and any such liens and security interests shall maintain their priority as provided herein until satisfied and discharged subject to the Bankruptcy Code.

15. This Order, and each of its terms, shall be effective immediately upon entry by the Court and the automatic stay of judgment provisions of Bankruptcy Rule 8017(a) shall not apply.

IT IS FURTHER ORDERED that a further hearing on Debtor's Motion for Authority to Use Cash Collateral shall be held by the Court in Courtroom _____ of the United States Bankruptcy Court for the District of Oregon, 1001 SW Fifth Avenue, Portland, Oregon 97204, on _____, 2011, at _____ .m. Within three (3) business days after the entry hereof, Debtor shall mail or otherwise serve a copy of this Order, together with a notice of the further hearing pursuant to LBR 4001-1.D and LBF 541.50.

#

Presented by:

TONKON TORP LLP

By

Albert N. Kennedy, OSB No. 821429
Michael W. Fletcher, OSB No. 010448
888 S.W. Fifth Avenue, Suite 1600
Portland, OR 97204-2099
Telephone: 503-221-1440
Facsimile: 503-274-8779
E-Mail: al.kennedy@tonkon.com
 michael.fletcher@tonkon.com
Attorneys for Debtor

cc: List of Interested Parties

LIST OF INTERESTED PARTIES

***In re Western Communications, Inc.*
U.S. Bankruptcy Court Case No. 11-37319-elp11**

ECF PARTICIPANTS:

- US Trustee, Portland USTPRegion18.PL.ECF@usdoj.gov

NON-ECF PARTICIPANTS:

SECURED CREDITOR

Bank of America
c/o Thomas Brown, Senior VP
WA1-501-13-24
800 5th Ave., 13th Fl.
Seattle, WA 98104

TOP 20 UNSECURED CREDITORS

Page Cooperative, Inc.
c/o John Snyder
700 American Ave., #101
King of Prussia, PA 19406

City of Bend – Finance
c/o Sonia Andrews
POB 431
Bend, OR 97709

Bendtel, Inc.
POB 356
Bend, OR 97709

PDI Plastics, Inc.
5037 Pine Creek Dr.
Westerville, OH 43081

Schermerhorn Bros. Co.
POB 668
Lombard, IL 60148-0668

Cascade Natural Gas Corp.
POB 7608
Boise, ID 83707-9928

Traneoregon, Inc.
POB 23579
Portland, OR 97281

Publishing Group of America, Inc.
341 Cool Springs Blvd., #400
Franklin, TN 37067

Band-It Rubber Co.
1711 Delilah St.
Corona, CA 92879-1865

Global Electronic Services, Inc.
5325 Palmero Ct.
Buford, GA 30518

Lubcon Turmo Lubrication, Inc.
5460 33rd St., SE
Grand Rapids, MI 49512

ITD Print Solutions
POB 6205
Carson, CA 90749

Stanley Convergent Security
55 Shuman Blvd., #900
Naperville, IL 60563

Airfilco, Inc.
415 N Tillamook St.
Portland, OR 97227-1823

Databar, Inc.
2908 Meridian E #201
Edgewood, WA 98371-2111

All Press Parts & Equipment, Inc.
612 Shorehaven Lane
Oshkosh, WI 54904

Digital Technology International
1180 N Mountain Springs Pkwy
Springville, UT 84663